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State v. Grigg Appellant's Brief Dckt. 36351

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,
Plaintiff-Respondent,
v.
JEFFREY GRIGG,
Defendant-Appellant.

NO. 36351

APPELLANT'S BRIEF

COPY

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF CANYON

HONORABLE GREGORY M. CULET
District Judge

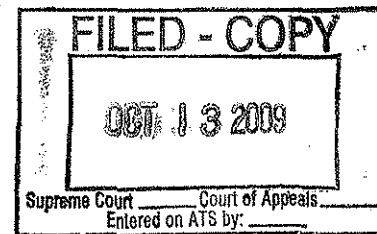
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TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES.....	ii
STATEMENT OF THE CASE.....	1
Nature of the Case	1
Statement of the Facts and Course of Proceedings.....	1
ISSUE PRESENTED ON APPEAL	6
ARGUMENT.....	7
The District Court Erred When It Denied Mr. Grigg's Motion To Suppress	7
A. Introduction	7
B. Standard Of Review	7
C. The District Court Erred When It Denied Mr. Grigg's Motion To Suppress	7
1. The Officer Lacked Reasonable Suspicion To Detain Mr. Grigg	8
2. All Evidence Collected Against Mr. Grigg Following The Illegal Detention Must Be Suppressed As It Is Fruit Of The Illegal Governmental Activity.....	9
CONCLUSION	10
CERTIFICATE OF MAILING.....	11

TABLE OF AUTHORITIES

Cases

<i>Delaware v. Prouse</i> , 440 U.S. 648 (1979).....	8
<i>Florida v. Royer</i> , 460 U.S. 491 (1983).....	8
<i>Illinois v. Krull</i> , 480 U.S. 340 (1987).....	8
<i>Mapp v. Ohio</i> , 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961)	8
<i>Segura v. United States</i> , 468 U.S. 796 (1984).....	9
<i>State v. Bainbridge</i> , 117 Idaho 245, 787 P.2d 231 (1990)	10
<i>State v. Cerino</i> , 141 Idaho 736, 117 P.3d 876 (Ct. App. 2005)	8
<i>State v. Lafferty</i> , 139 Idaho 336, 79 P.3d 157 (Ct. App. 2003).....	7
<i>State v. Maddox</i> , 137 Idaho 821, 54 P.3d 464 (Ct. App. 2002).....	8
<i>State v. McCall</i> , 135 Idaho 885, 26 P.3d 1222 (2001).....	7
<i>State v. Schumacher</i> , 136 Idaho 509, 37 P.3d 6 (Ct. App. 2001)	8
<i>State v. Valdez-Molina</i> , 127 Idaho 102, 897 P.2d 993 (1995).....	7
<i>State v. Wigginton</i> , 142 Idaho 180, 125 P.3d 536 (Ct. App. 2005).....	10
<i>Terry v. Ohio</i> , 392 U.S. 1 (1968).....	8
<i>United States v. Brignoni-Ponce</i> , 422 U.S. 873 (1975)	8
<i>Weeks v. United States</i> , 232 U.S. 383 (1914).....	8
<i>Wong Sun v. United States</i> , 371 U.S. 471 (1963).....	9

Constitutional Provisions

Idaho Const. Art. I, § 17	7
U.S. Const. amend. IV	7

STATEMENT OF THE CASE

Nature of the Case

Jeffery Grigg appeals from the Judgment and Commitment and Order of Probation on Suspended Execution of Judgment. After the district court denied his motion to suppress, Mr. Grigg entered a conditional plea of guilty to the charge of possession of a controlled substance. Mr. Grigg asserts that the district court erred in denying his motion to suppress evidence because his right to be free from unreasonable seizures, protected by the Fourth and Fourteenth Amendments to the United States Constitution and Article I § 17 of the Idaho Constitution, was violated when law enforcement officers improperly seized him without reasonable suspicion, and as such, the evidence derived from the improper seizure must be suppressed.

Statement of the Facts and Course of Proceedings

On October 2, 2008, an Information was filed charging Mr. Grigg with possession of a controlled substance. (R., pp.22-23.) Shortly thereafter, Mr. Grigg filed a Motion to Suppress Evidence Admission/Confession and Notice of Hearing requesting that the district court suppress evidence, specifically controlled substances and paraphernalia, "obtained as a result of the warrantless seizure, search, and illegal detention of the defendant, and suppression the admissions/confessions . . . made as a result of the warrantless seizure, search, and illegal detention of the defendant." (R., pp.28-29.) The district court held a hearing on the motion to suppress. (R., pp.41-43.)

At the hearing, the district court took judicial notice of Officer Klitch's testimony at the preliminary hearing. (Tr.1/15/09, p.9, Ls.12-17.) Officer Klitch testified that he

stopped at a park in Nampa and began to chat with some visitors to the park. (Tr.9/25/08, p.6, L.8 – p.7, L.24.) After talking to the occupants of a SUV, Officer Klitch approached a second car, later determined to belong to Mr. Grigg. (Tr.9/25/08, p.8, Ls.1-23.) Soon after approaching the car, Officer Klitch noticed that Mr. Grigg “had a white substance around his mouth which I thought was unusual. Also he had eyelid tremors. He had reddening of the conjunctiva of his eyes and he also had glassy bloodshot eyes, which through my training and experience led me to believe that the subject was under the influence of drugs.” (Tr.9/25/08, p.9, L.6 – p.10, L.1.) Officer Klitch went on to testify that in his training he learned that eyelid tremors and reddening of the conjunctiva were indicators of marijuana use and that glassy bloodshot eyes were indicative of impairment by alcohol or drugs. (Tr.9/25/08, p.10, L.17 – p.11, L.10.) Based upon these observations, Officer Klitch ordered Mr. Grigg out of the car and began to investigate him for being under the influence of drugs in a public place. (Tr.9/25/08, p.11, Ls.11-19.) Following this initial detention, Mr. Grigg made admissions that there were illegal substances in his car and he was eventually arrested for felony possession of a controlled substance. (Tr.9/25/08, p.13, L.17 – p.14, L.5, p.20, Ls.12-17.)

Mr. Grigg testified on his own behalf at the suppression hearing. (Tr.1/15/09, p.14, Ls.5-10.) Mr. Grigg testified that he was parked in a park, attempting to repair in cigarette lighter so he could charge his cell phone when he was approached by a police officer. (Tr.1/15/09, p.14, L.11 – p.16, L.5.) The officer asked what he was doing and then requested his ID. (Tr.1/15/09, p.16, Ls.23-25.) Shortly thereafter, Officer Klitch ordered Mr. Grigg out of the car. (Tr.1/15/09, p.18, Ls.1-2.) Mr. Grigg testified that

during this initial encounter he was wearing his sunglasses and that the officer could not have observed his eyes. (Tr.1/15/09, p.18, Ls.14-25.)

The district court also considered the video recording of the latter portion of the detention, the search, and arrest. (R., p.43; Exhibit A-2.) At the hearing, defense counsel argued that, "Trooper Klitch was well within his rights to go up and talk to the defendant. Where he stepped over the line was ordering him from the vehicle based on the sketchy evidence that was adduced at the preliminary hearing." (Tr.1/15/09, p.29, L.21 – p.30, L.1.)

The district court denied the motion to suppress. (R., p.44.) Specifically, the district court found that:

This is a case in which there was a – it was approximately 5:00 or 6:00 at night. It was a summer evening. The sun was out. The defendant's car was parked in the shade at a park.

The officer made consensual contact initially. That contact soon turned into an investigative detention, commonly what would fall within that Terry type of stop, in between an arrest and consensual contact. And then eventually turned into a full-blown arrest and a search.

The primary issues addressed in this case were, one, the conflicting credibility of the testimony at the preliminary hearing of the officer, versus the defendant's testimony at the suppression hearing. The officer testified in the preliminary hearing, which was submitted with [t]his hearing, that when he made the initial contact with the defendant, he observed white substance around his mouth, and the defendant had eye tremors, reddening of the conjunctiva of the eye and glassy, blood shot eyes. And based on his experience, it caused him to believe that he was under the influence of drugs.

He makes reference, both on the video and in his testimony, to a statute that makes it a crime to be under the influence of a controlled substance in public.

...

Now, the defendant testified under oath that he was wearing sunglasses at the time and that the officer could not have seen his eyes. Now, I looked at the video, and the car is clearly in the shade, and is clearly shaded at the time. The officer talks to him again on the video about why he came up and talked to him, and the officer goes on to discuss with the defendant the physical indicators, glassy, bloodshot eyes, eye tremor. Later the officer says again, "I saw your eyes," and gets to the point of "tremors when you closed your eyes," et cetera, et cetera.

Although the defendant had his sunglasses hanging on his shirt, at no time in that discussion ever, at any time when they had that colloquy, was there any mention about "You couldn't have seen my eyes. I had sunglasses on."

Now, why is that significant? Because it goes to the credibility of the witnesses here. Suddenly several months later, "I had my sunglasses on." I don't buy it. Credibility is an issue, and I found that not to be credible.

Having noted that, that means then, that I buy the officer's testimony that he made the observations. Now, that's still pretty – it's not a significant observation, other than he did testify at the preliminary hearing that that was his conclusion, based on his training. And so at that point, the consensual contact becomes investigatory. He asked for his driver's license, he runs a check. At one point later he does give the defendant Miranda rights.

...

So there was a consensual contact initially. It went into an investigatory detention. There was a reasonable basis for it to do so, based on the officer's observation. I have considered the conflicting testimony and looked at the video and seen clearly that the car was in the shade.

And I even – I take that back. Even in the tape, in the audio, the video/audio, the defendant states that he picked that spot to park his case and work on his cigarette lighter to get the charger to work or something, because – he picked it because it was shady.

And so the whole point is that he's in the shade working on his car to fix his cigarette lighter to make sure it will charge up his – whatever device he had. And I just find the credibility of the testimony to be, no, he wasn't wearing his sunglasses. He was in the shade looking at the thing. And that the officer's testimony has credibility.

So as the dominos go, the sequence occurred with probable cause, or reasonable cause for the detention, and then probable cause for the search. There was the automobile exception. It was parked in — the car was parked in a parking lot in a public park. And so that's it. I'm denying the motion to suppress.

(Tr.1/16/09, p.5, L.13 — p.10, L.6.)

Following the denial of the motion to suppress, Mr. Grigg entered a conditional guilty plea to the charge, reserving his right to appeal the denial of the suppression motion. (R., pp.45-48, 56-57.) Mr. Grigg was sentenced to a unified sentence of seven years, with three years fixed, suspended for a five year probationary term. (R., pp.63-66.) Mr. Grigg filed a Notice of Appeal timely from the Judgment and Commitment and Order of Probation on Suspended Execution of Judgment. (R., pp.67-69.)

ISSUE

Did the district court err when it denied Mr. Grigg's motion to suppress?

ARGUMENT

The District Court Erred When It Denied Mr. Grigg's Motion To Suppress

A. Introduction

Mr. Grigg's right to be free from unreasonable seizures was violated when officers illegally seized him. The State failed to meet its burden of proof, failing to show that the officer had reasonable suspicion to detain Mr. Grigg. The officer could not seize Mr. Grigg without reasonable suspicion and, as such, the district court's order denying Mr. Grigg's motion to suppress should be reversed.

B. Standard Of Review

The review of a suppression motion is bifurcated. *State v. Lafferty*, 139 Idaho 336, 338, 79 P.3d 157, 159 (Ct. App. 2003). When a decision on a motion to suppress is challenged, the trial court's findings of fact that are supported by substantial evidence are accepted; however, the application of constitutional principles to the facts as found are freely reviewed. *State v. McCall*, 135 Idaho 885, 886, 26 P.3d 1222, 1223 (2001). At a suppression hearing, the power to assess the credibility of all witnesses, weigh evidence, resolve factual conflicts and draw factual inferences is vested in the trial court. *State v. Valdez-Molina*, 127 Idaho 102, 106, 897 P.2d 993, 997 (1995).

C. The District Court Erred When It Denied Mr. Grigg's Motion To Suppress

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV; Idaho Const. Art. I, § 17. The purpose of these constitutional rights is to "impose a standard of reasonableness upon the exercise of discretion by

governmental agents and thereby safeguard an individual's privacy and security against arbitrary invasions." *State v. Maddox*, 137 Idaho 821, 824, 54 P.3d 464, 467 (Ct. App. 2002) (citing *Delaware v. Prouse*, 440 U.S. 648, 653-654 (1979)). The United States Supreme Court has held that when evidence is obtained in violation of the Fourth Amendment, the judicially developed exclusionary rule usually precludes its use in a criminal proceeding against the victim of the illegal search and seizure. *Illinois v. Krull*, 480 U.S. 340, 347 (1987) (citing *Mapp v. Ohio*, 367 U.S. 643 (1961); *Weeks v. United States*, 232 U.S. 383 (1914)).

1. The Officer Lacked Reasonable Suspicion To Detain Mr. Grigg

The Fourth Amendment safeguard against unreasonable searches and seizures applies to the seizures of persons through detentions falling short of arrest or an arrest. *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975); *Terry v. Ohio*, 392 U.S. 1, 16 (1968). When the purpose of the detention is to investigate a possible traffic offense or other crime, it must be based upon reasonable, articulable suspicion of criminal activity. *State v. Schumacher*, 136 Idaho 509, 37 P.3d 6 (Ct. App. 2001); *Florida v. Royer*, 460 U.S. 491, 498 (1983). Although the required information leading to formation of reasonable suspicion in the mind of the police officer is less than the information required to form probable cause, it still "must be more than mere speculation or a hunch on the part of the police officer." *State v. Cerino*, 141 Idaho 736, 738, 117 P.3d 876, 878 (Ct. App. 2005). The reasonableness of the officer's suspicion is evaluated based upon the totality of the circumstances at the time of the seizure. *Flowers*, 131 Idaho at 208, 953 P.2d at 648.

In the case at hand, the State presented only the evidence that Mr. Grigg was having issues with his eyes when Officer Klitch approached him. (Tr.9/25/08, p.9, L.6 – p.10, L.1.) Specifically, Officer Klitch noted that, “he had eyelid tremors. He had reddening of the conjunctiva of his eyes and he also had glassy bloodshot eyes . . .” (Tr.9/25/08, p.9, L.6 – p.10, L.1.) The officer testified that these eye problems can be indicative of drug use. (Tr.9/25/08, p.9, L.6 – p.10, L.1.)

While the district court did ultimately find that this was sufficient to provide reasonable suspicion, it noted that, “Now, that’s still pretty – it’s not a significant observation, other than he did testify at the preliminary hearing that that was his conclusion, based on his training.” (Tr.1/16/09, p.7, Ls.22-25.) As such, the district court appeared to struggle with these indicators being sufficient to provide reasonable suspicion.

Mr. Grigg asserts that eyelid tremors, reddening of the conjunctiva, and glassy bloodshot eyes are, alone, not enough to establish reasonable suspicion that an individual is under the influence of illegal substances. Contrary to the district court’s ultimate finding, the State failed to provide evidence of reasonable articulable suspicion to detain Mr. Grigg and, therefore, all evidence obtained as a result of the illegal seizure of his person must be suppressed.

2. All Evidence Collected Against Mr. Grigg Following The Illegal Detention Must Be Suppressed As It Is Fruit Of The Illegal Governmental Activity

The application of the exclusionary rule to suppress evidence is appropriate only to evidence that is fruit of the illegal governmental activity. *Segura v. United States*, 468 U.S. 796, 815 (1984); *Wong Sun v. United States*, 371 U.S. 471 (1963); *State v.*

Bainbridge, 117 Idaho 245, 249, 787 P.2d 231, 235 (1990). The test is “whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint.” *Wong Sun*, 371 U.S. at 488 (quoting *MAGUIRE, EVIDENCE OF GUILT*, p. 221 (1959)). Suppression is required only if “the evidence sought to be suppressed would not have come to light but for the government's unconstitutional conduct.” *State v. Wigginton*, 142 Idaho 180, 184, 125 P.3d 536, 540 (Ct. App. 2005) (quoting *Nava-Ramirez*, 210 F.3d at 1131).

In the case at hand, the above evidence clearly shows that Mr. Grigg was illegally seized without reasonable suspicion. Had Mr. Grigg not been illegally seized, the evidence located in the vehicle would not have been discovered. The State failed to meet its burden in showing that the evidence is untainted; therefore, all the evidence collected after the impermissible seizure must be suppressed as fruit of the illegal police activity.

CONCLUSION

Mr. Grigg respectfully requests that this Court vacate the district court's order of judgment and commitment and reverse the order which denied his motion to suppress.

DATED this 13th day of October, 2009.


ELIZABETH ANN ALLRED
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 13th day of October, 2009, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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